

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-07-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL Nos.1720,1721 AND 1722 OF 1998

W.A.No.1720 OF 1998 :

- 1.Tamilnadu Electricity Board,
rep.by its Chairman,
Electricity Avenue, Anna Salai,
Chennai -2.
- 2.Ennore Thermal Power Station,
rep.by its General Superintendent,
Tamilnadu Electricity Board,
Ennore, Chennai - 57. Appellants

-vs-

- 1.Tamil Manila Thozhilalar Sangam,
rep.by its General Secretary,
K.Nithyanandam.
- 2.Githa Enterprises,
94, G.A.Road,
Chennai-21,
(Contractors).

- 3.Govt.of Tamilnadu,
rep.by its Commissioner &
Secretary to Govt.,
Dept. of Labour,
Chennai-9.

WEB COPY

4.Minvaria Opanda Thozhilalar Sangam,
rep.by its President,
142, Thambuchetty Street,
Chennai-1. ... Respondents
(R4 impleaded as per order dated 26.10.05
made in WA 5331/04)

W.A.No.1721 OF 1998 :

The Chief Engineer,
Operation,
Mettur Thermal Power Station,
Tamilnadu Electricity Board,
Mettur Dam,
Salem District. Appellant

-vs-

- 1.M.Krishnan
- 2.E.Muthu
- 3.L.Raman
- 4.K.Annamalai
- 5.C.Rajendran
- 6.Siddan
- 7.Paulraj
- 8.C.Srirangan
- 9.M.Moorthy
- 10.E.Moorthy
- 11.A.Kuppusamy
- 12.P.Pethan @ Raju
- 13.V.Ganesan
- 14.Kannan
- 15.Arumugam
- 16.K.Krishnamoorthy
- 17.Nallathambi
- 18.P.Krishnamoorthy
- 19.A.Arivzhan
- 20.K.Sengotaiyan
- 21.C.Palanisamy
- 22.V.Rathakrishnan
- 23.P.Perumal
- 24.Rajamanickam
- 25.M.Palanisamay
- 26.B.Subhan
- 27.M.Krishnan
- 28.Selvaraj
- 29.C.Mani
- 30.Ramalingam

31.T.R.Kathiravan
32.Ponnusamy
33.Palaiyan
34.Jayakumar
35.Natarajan
36.Rajendran
37.Mahtappan
38.Perumal
39.Moorthy
40.Murugan
41.Shanmugam
42.Raju
43.Thomas
44.Sathyamoorthy
45.Veerappan
46.Manickam

47.The Government of Tamilnadu,
rep.by its Secretary to Government,
Labour & Employment Department,
Chennai-9.

48.A.Ponnusamy
49.Ayyadurai
50.Rajagopal.

... Respondents

W.A.No.1722 OF 1998 :

The Superintending Engineer,
Workshop Circle,
Tamilnadu Electricity Board,
Mettur Dam,
Salem District.

...

Appellant

सत्यमेव जयते
-vs-

1.Central Organisation of Tamilnadu Electricity Board,
Employees Mettur Branch,
Regn.No.158, C.P.T. rep.by the
Secretary Thiru M.Arthanari,
Rajaganapathy Nagar,
Mettur,
Salem District.

2.The Government of Tamilnadu,
rep.by its Secretary,
Labour & Employment Dept.,
Chennai-9.

3.Natarajan
4.Ammasani

...

Respondents

Appeals against the common order, dated 24.09.1998, made in W.P.Nos.4769 of 1989, 3796 of 1990 and 3566 of 1990 on the file of this Court.

For appellants : Mr.M.Vaidyanathan
For respondents 3 in W.A.No.1720 of 1998,
respondent 47 in W.A.No.1721 of 1998 &
respondent 2 in W.A.No.1722 of 1998 :
Mr.C.Ramesh,
Addl.Govt.Pleader.

For respondent 4 in W.A.No.1720 of 1998 :
Mr.V.Prakash, Senior Counsel
for Mr.P.Chandrasekaran

COMMON JUDGMENT

S.PALANIVELU, J.

Since all these three Writ Appeals relate to an identical issue, they are being disposed of by a common judgment.

2. Writ Petitions, against the orders of which these Writ appeals are filed, were : (i) for a declaration, declaring the workmen listed in Annexure I and II to the writ petition to be the workmen of respondents 1 and 2 therein, namely, Tamil Nadu Electricity Board, who is the appellant herein, and consequently to direct the Board to regularise and absorb the workmen in service and pay them all past benefits as was paid to the permanent workmen, who were doing the same work before, and (ii) for a mandamus, directing the Government of Tamil Nadu, to exercise its power under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, and issue a Notification, abolishing the employment of contract labour in Coal Handling Plant Division and Central Stores in the workshop of Tamil Nadu Electricity Board at Mettur Dam and consequently direct the Board, to absorb the workmen/petitioners.

3. The case of the writ petitioners/workmen was that they are engaged by a contractor to work in the Tamil Nadu Electricity Board and they have been in continuous service from 1987 without any break; the contractor is not having any

valid licence required under the Contract Labour Act; though they are engaged by a contractor, their work is completely supervised, coordinated and controlled by the officials of the Board; setting up of an intermediary as a contractor is merely a device to avoid statutory liabilities under Labour Welfare Legislation; as such, the said practice of the Board amounts to unfair labour practice; therefore, they are the workmen of the Board and, hence, their services are to be regularised in Ennore Thermal Power Station and Mettur Thermal Power Station, as the case may be.

4. Per contra, the stand of the Tamil Nadu Electricity Board was that the writ petitioners/workmen are engaged by a contractor only for loading and unloading of coal; the nature of work of feeding of coal on contract is not permanent; the contractor is having a valid licence; therefore, the petitioners are not the workmen of the Board and, instead, they are the workmen of the contractor; the Board has no connection with the contract labourers for employment; as per the directions of the Government, the possible vacancies should be filled up only through Employment Exchange; the plea of the petitioners to absorb them in the Board and regularise their services without following Employment Exchange criteria is not sustainable under law and, hence, the Writ Petitions are liable to be dismissed.

5. The learned single Judge, on going through the materials available on record and considering the rival contentions made by the learned counsel for the parties and also discussing the issue in detail as to whether the Contract Labour System has to be abolished in the areas where the petitioners are working, in terms of Section 10 of the Contract Labour (Abolition and Regulation) Act, 1970, held that before issuing any notification under sub-section (1) of Section 10, the appropriate Government has to take note of the conditions of work and benefits provided for the contract labour in that establishment and also other relevant factors as enumerated in clauses (a) to (d) to sub-section (2) of Section 10 of the Act. The learned single Judge also followed the settled legal propositions, particularly the decision of the Hon'ble Supreme Court in *Air India Statutory Corporation v. United Labour Union*, AIR 1997 Supreme Court 645, and directed the Government of Tamil Nadu to issue a Notification, abolishing the employment of contract labour system in Central Stores and Coal Handling Plant Division, in the workshop of Tamil Nadu Electricity Board at Mettur Dam, and to regularise and absorb the writ petitioners/workmen within a period of eight weeks thereafter.

6. It is not debated that the writ petitioners are in continuous service for years together and their services are very much essential and integral to the Board.

7. It is argued on behalf of the Board that the services of the said workmen are required for a limited period in a day and, therefore, they could not be made permanent.

8. We are unable to accept the said argument for the reason that there is no material to show that the services of the workmen would not consume the entire day. It is to be noted that the processes in the units concerned are perennial in nature. The nature of work is concedingly a continuous one and it is found that the workmen are working in shifts or by rotation. It is also seen from the averments that even on national holidays and festival days, the shift method is being observed by the management. It is also to be noted that though the contractors are changing once in six months, the workmen are employed continuously without any interruption.

9. It is vehemently argued on behalf of the writ petitioners that the practice of engaging the workmen through contractors is an unfair labour practice, which is barred under the provisions of the Contract Labour (Regulation and Abolition) Act as well as Article 23 (1) of the Constitution of India, and that the services rendered by the workmen are being supervised and controlled by the officials of the Board.

10. Earlier, when these appeals came up for hearing on 30.03.2007, learned counsel for the appellant Board was directed to file an affidavit and state as to how many workmen, who are entitled to derive the advantage of the judgment in question, have been absorbed and how many of them, who could not be absorbed because of ineligibility or want of vacancy or death or other reason. The Board was also directed to give the approximate age of such workmen, who could not be absorbed on one or other grounds. Similarly, learned counsel appearing for the respondent union was directed to address the Court as to how the Board could absorb any workmen beyond its sanctioned strength and vacancy.

11. Pursuant to the said direction, the appellant Board filed an additional affidavit, setting out the subsequent developments after the filing of Writ Petitions before this Court. It is stated therein that at the time of filing of Writ Petitions, the Board had taken up the implementation of Justice Khalid Commission report, dated 11.02.1991, for absorption of contract labourers and thousands

of them were absorbed as Helpers in Tamil Nadu Electricity Board in a phased manner from 1991. It is also stated therein that in the course of absorption of contract labourers as per Justice Khalid Commission and as per the orders of the Board, in W.P.No.4769 of 1989, out of 46 writ petitioners, none was absorbed ; in W.P.No.3566 of 1990, out of 13 writ petitioners, 9 were absorbed and in respect of W.P.No.3796 of 1990, out of 46 writ petitioners, 32 were absorbed. It is further stated that the 63 names mentioned in Annexure-I were not found either in the list filed before Justice Khalid Commission or in the list prepared on 05.01.1998 and, hence, they could not be absorbed, due to ineligibility. However, the affidavit is silent on the aspect as to what is the nature of ineligibility on the part of the labourers. It is also mentioned in the affidavit that as for 36 contract labourers of Ennore Thermal Power Station, since they did not satisfy the conditions prescribed by the Board for absorption, they were not considered for absorption. Again, the affidavit is bereft of details with regard to the alleged conditions prescribed. Even though the affidavit is appended with three annexures with reference to three Writ Petitions, since material particulars have not been completely furnished as per the direction of this Court, this Court is unable to come to a definite conclusion.

12. In the above said circumstances, the additional affidavit cannot be pressed into service, as it does not serve any purpose and also merit consideration. Further, the respondent union has also failed to furnish any particulars with regard to the direction of this Court as to how the Board could absorb any workmen beyond its sanctioned strength and vacancy. Since the learned single Judge has considered the matter in-depth and passed a reasoned order, we are not inclined to interfere with the same.

13. Therefore, these Writ Appeals are dismissed. As such, the Government of Tamil Nadu and the Tamil Nadu Electricity Board are directed to implement the order of the learned single Judge, by issuing necessary notifications, subject to the eligibility of the workmen concerned with reference to their age of retirement for the service, within a

period of eight weeks from today. No costs. Consequently, the connected C.M.P.Nos.19220,19221 and 19224 of 1998 are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit

To

- 1.The Commissioner & Secretary to Government,
Govt.of Tamilnadu,Department of Labour,Chennai-9.
- 2.The Chairman,
Tamilnadu Electricity Board,
Electricity Avenue, Anna Salai,Chennai -2.
3. The General Superintendent,
Ennore Thermal Power Station,
Tamilnadu Electricity Board, Ennore, Chennai - 57.
- 4.The Chief Engineer,
Operation,Mettur Thermal Power Station,
Tamilnadu Electricity Board,
Mettur Dam,Salem District.
- 5.The Superintending Engineer,
Workshop Circle,Tamilnadu Electricity Board,
Mettur Dam,Salem District.

+1cc to Govt. Pleader Sr 40648
+1cc to Mr.M.Vaidyanathan, Advocate Sr 40570
+1cc to Mr.P.Chandrasekaran, Advocate Sr 40220

BK(CO)
km/17.7.

W.A.Nos.1720 TO 1722 OF 1998